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IN THE

Supreme Court of the United States

October Term, 1956
No. 5

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENT'S BRIEF.

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THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENT'S BRIEF.

I.
JURISDICTION.

Petitioner has invoked the jurisdiction of this Court under 28 U. S. C., Section 1257(3). For the reasons set forth in Part VI below, respondents deny jurisdiction on grounds that:

(a) The Federal question was not properly presented to the Supreme Court of California.

(b) Petitioner has failed to establish that the Federal issue was necessary to the decision of the Supreme Court of California.

II.
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

A. THE PROVISIONS OF THE UNITED STATES CONSTITUTION INVOLVED ARE:

1. The First Amendment.
2. The Fourteenth Amendment.

These Amendmens are set out in full in the appendix.

B. THE CALIFORNIA STATUTES INVOLVED ARE:

1. Section 6010—Board of Governors in General.
2. Section 6046—Examining Committee; Powers.
3. Section 6047—Rules and Regulations of Examining Committee.
4. Section 6060—(a), (b), (c) and (d)—Qualification, Examination and Fee.
5. Section 6064—Admission.
6. Section 6064.1—Advocacy of Overthrow.
7. Section 6066—Review of Refusal of Certification.
8. Section 6068—Duties of Attorney.

These sections are set out in full in the appendix.

C. RULES AND REGULATIONS INVOLVED:

1. Rules Regulating Admission to Practice Law in California:

(a) Rule I, Section 2. Committee of Bar Examiners; General Powers.

(b) Rule X, Section 101. Moral Character.

2. Rules on Appeal of the California Supreme Court: (a) Rule 59(b).

These rules are set out in full in the appendix.

III.
QUESTIONS PRESENTED.

Questions relating to the jurisdiction of this Court which counsel were invited to argue in the order allowing certiorari:

1. Were petitioner's claims under the United States Constitution duly raised before the Supreme Court of California?

2. Was the Supreme Court of California's denial of a petition for a writ of review merely a refusal by that court to exercise its descretionary jurisdiction or is it to be deemed a disposition 'in the nature of a review,' *Salot v. State Bar*, 3 Cal. 2d 615, 617, and as such a final judgment within the meaning of 28 U. S. C., Sec. 1257?

3. Assuming the latter, was the determination of the Supreme Court of California based upon a rejection of claims arising under the Fourteenth Amendment of the Constitution of the United States, and more particularly, upon an evaluation of the constitutional significance of the evidence summarized under "1" on page 5 through the top of page 8 of the brief filed by the respondents on December 8, 1955 in opposition to the petition for the writ of certiorari herein?

Questions relating to the application of the Fourteenth Amendment:

4. Was petitioner denied procedural due process.

5. Can California constitutionally require applicants for admission to its bar to be of good moral character and not to advocate the violent overthrow of the government.

6. Could respondents properly determine that the following types of evidence were relevant to determining whether petitioner was a person of good moral character and did not advocate the violent overthrow of the government:

(a) Direct testimony that petitioner was a member of the Communist Party;

(b) Indirect evidence such as petitioner's writings and his appearance before and statements to the California Senate Committee on UnAmerican Activities that petitioner was a member of the Communist Party;

(c) Evidence such as petitioner's writings and his statements to the California Senate Committee on UnAmerican Activities that petitioner's standards of morality were deficient;

(d) Petitioner's failure to explain or deny or produce other evidence with respect to the doubts raised by the above types of evidence.

7. Was there any constitutional bar to considering one or more of the groups of evidence set forth in Question 6 to the extent that such evidence was relevant to the statutory standards for admission.

8. Excluding consideration of any evidence determined under 7 to have been constitutionally privileged, was there sufficient evidence to support the determination of the California Supreme Court that petitioner had failed to establish that he met all statutory standards for admission to the California Bar.

IV.
STATEMENT OF MATERIAL FACTS.

In reviewing petitioner's Application for Examination to Practice Law it became apparent to the Committee of Bar Examiners that serious doubts existed whether petitioner fulfilled the statutory qualifications for admission to the California Bar. In accordance with their standard procedures, respondents invited petitioner to appear before the Southern Subcommittee of the Committee of Bar Examiners and dispel these doubts as to his qualifications. The record on which the determination of the Committee of Bar Examiners and the California Supreme Court were based consists of the transcripts of three hearings before the Southern Subcommittee, the final *de novo* hearing before the full Committee of Bar Examiners, and the exhibits introduced at those hearings.

At all, except the initial Subcommittee hearing, petitioner was represented by counsel. As a reading of the full record would show, numerous matters such as petitioner's general educational and employment background were considered at the hearings which have no substantial effect on the essential issues in this case. For the sake of brevity, in summarizing each of the hearings, respondents will omit reference to such evidence and limit themselves to matters pertaining to the essential areas of doubt.

First Subcommittee Hearing [R. 4-46]:—Petitioner was presented with twenty one photostatic copies of the editorial pages of the California Eagle containing articles purportedly written by him and asked to identify them [R. 8-11]. He was then asked if he had appeared before the Senate Fact Finding Committee on UnAmerican Activities and was asked to identify a written statement which

he made to that Committee [R. 12-15]. In general, petitioner identified both the California Eagle articles and the statement to the Committee as the type of thing he had written.

Petitioner was questioned with respect to certain of his articles:

> "Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as "killers." No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the "American way of life" we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.
>
> "None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attorney-General who denies us the right to bail and tells brother to spy on brother."

He was also questioned with respect to matters in the transcript of the Senate Committee hearings such as participation in organizations characterized as Communist dominated [R. 25-28]. He affirmed membership in some of these organizations and stated that he did not remember with respect to others. The Southern Subcommittee thereupon called petitioner's attention to Business and Professions Code Section 6064.1 whereby they were obliged to inquire into Communist associations as relevant to whether he advocated the violent overthrow of the government, and asked him whether he was a Communist. He refused to answer stating, among other things, that whatever he answered the Committee "would get a dozen

informers who would say the opposite" [R. 29]. He also took the position that the Committee had no right to ask the question.

Mrs. Alice King Bennett was then called before the Committee and testified at some length that she knew petitioner as a fellow member of a small unit in the Communist Party [R. 42, *et seq.*]. (Mrs. Bennett was allowed to testify at the first hearing with the understanding that petitioner intended to obtain counsel for future hearings and would at that time be given full opportunity to cross-examine her.) [R. 44].

Second Subcommittee Hearing [R. 46-85]:—Mrs. Bennett was cross-examined by counsel for petitioner and reaffirmed her identification of petitioner as an active member of the Communist Party [R. 48-57]. Petitioner was again called to testify. He volunteered that he had reviewed his California Eagle articles, that the articles introduced by the Subcommittee at the previous hearing were written by him, and himself introduced into evidence a complete set of his California Eagle articles together with certain other articles which he had written at various times in the past [R. 60, *et seq.*]. Petitioner raised the question of character witnesses and it was agreed that their testimony would be submitted in the form of written statements [R. 70-71].

Petitioner was then again questioned regarding his present and past affiliations with the Communist Party and refused to answer based on the First Amendment [R. 71, *et seq.*].

Third Subcommittee Hearing [R. 86-96]:—Letters of reference were presented on behalf of petitioner and introduced as applicant's Exhibit E [R. 88-92]. A sum-

mary of petitioner's position was made by his counsel [R. 93, *et seq.*].

Petitioner's qualifications were taken under submission by the Southern Subcommittee which determined that he had failed to establish his qualifications for admission [R. 131]. Petitioner thereupon appealed for a *de novo* hearing before the full Committee.

Hearing Before The Full Committee [R. 96-130]:— The record before the Southern Subcommittee and the exhibits which had been introduced were incorporated as part of the record before the full Committee [R. 97]. No attempt will be made to set out a full summary of these exhibits but the following brief quotations from the California Eagle articles [Committee Ex. 1, p. 133, *et seq.*][1] illustrate the type of statement which the Committee felt obliged to consider and inquire into:

"THE VATICAN'S POLITICAL POWER

* * * * * * * *

"When Belgium, France and Holland were conquered 'the Vatican ordered the German hierarchy to say prayers of thanksgiving in all German Catholic Churches for the Fuehrer.'

"And the Pope opened secret-negotiations with Hitler for a new Concordat—an agreement with Hitler in which, in return for a privileged position for the Church in the New Germany and 'whatever

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[1]In the record presented to this Court the full set of California Eagle articles are designated as Committee Exhibit 1. Actually the full set of articles were introduced at the hearings as petitioner's exhibit, and the Committee exhibit consisted of only 21 of these articles on a format showing the entire California Eagle page in which they appeared. The Committee exhibit is not part of this record.

German armies conquered,' the Hierarchy would 'make itself indispensable to the nation for the victorious conclusion of the war.' In January 1941 the German bishops in an official statement expressed the hope that they 'shall be allotted a share in the internal reconstruction of the Greater Reich. . . .'

"No Help to the Allies

"As Nazi armies ravaged vast areas of the USSR, the Vatican advised the national hierarchies throughout the world, even in the Allied countries, 'to support the military campaign against the Godless Russians. . . .'

"But when the Soviet Union began to counter-attack, the Vatican tried desperately to keep the USA and Great Britain from aiding our Ally and to 'find a means of preventing Russia from advancing westwards.'" [R. 150-151.]

* * * * * * * *

"The Cesspool

* * * * * * * *

"Traitor! Traitor!

"Betrayal is in the air. Judges, with impunity, violate our constitutional rights—and editors honor them for it. Stool pigeons are the new national heroes, and hypocrisy has been raised to the level of national policy.

"The president violates his oath of office by dragging us into war—and the nation's spiritual leaders applaud. . . ." [R. 154-155.]

* * * * * * * *

"Some Notes On
WESTERN CIVILIZATION

* * * * * * * *

"A reference, perhaps, to Washington's coming to the rescue of the French killers of the Viet-Namese patriots by agreeing to finance that 'dirty war,' just as we're still financing the ogre Chiang's murder of innocent Chinese.

"While the 'big three' approve a new German army and Germany's manufacture of explosives—as the Jewish communities there are forced to form defense organizations again, only five short years after V-E Day.

* * * * * * * *

"Exposing their moral, spiritual and intellectual bankruptcy, the bipartisan beasts, diseased with colossal conceit and contempt for the people, demonstrate they are trying to make civilization over in their own image—a devil's amalg-m of hypocrasy and brutality, idolization of property, want and agony, betrayal and filth, lies and death." [R. 162-163.]

* * * * * * * *

"The Greater Loyalty

* * * * * * * *

"To consider loyalty to America as identical with loyalty to Truman, Dulles & U. S. Steel is, to me, the ultimate in sacrilege. Truman, Dulles & U. S. Steel—saboteurs of Americans' constitutional liberties, of peoples' self-government everywhere, of the hopes promised mankind by victory in the last war! Lynchers of Americans and engineers of the doctrine of guns over butter!

* * * * * * * *

"Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people. Loyalty to America today, therefore, must mean opposition to those who are betraying our country's traditions, who are squandering her manpower, her honor and her riches.

* * * * * * * *

"They can't jail us all. They may succeed in driving many of the best Americans into exile—to form, on a friendlier soil, a government-in-exile for a Free America. But this will not happen if we fight back now . . . . as heroically as Americans fought the British and their Tories in our first revolution . . . as boldly as Americans fought the slaveholders and their Copperheads in our second revolution. . . ." [R. 213, *et seq.*]

"THE GANGSTERS, INCORPORATED

* * * * * * * *

"No Comparison

"Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as 'killers.' No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the 'American way of life' we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure.

"None of the murders have been so sinful as a Dulles who uses religion to champion the anti-Christ. None such a threat to our security as a U. S. Attor-

ney General who denies us the right to bail and tells brother to spy on brother." [R. 246.]

Petitioner stated his position to the Committee [R. 98-106] in which, among other things, he stated that the Committee's inquiry into good moral character under California Law was limited to "the presence or absence of conduct of a criminal nature, conduct involving moral turpitude" and that under Business and Professions Code Section 6064.1 the Committee could inquire whether petitioner personally advocated the violent overthrow of the government but once this question was asked and answered, could not inquire further.

The Committee attempted to inquire into the organizations to which petitioner belonged but petitioner took the position, on the basis of the First Amendment, that the Committee was not entitled to know what organizations he belonged to or with whom he associated [R. 109]. Petitioner was presented with his testimony before the Tenney Committee [Committee Ex. 2; R. 109] and asked if there was anything therein which he wished to change or correct. He stated that this testimony reflected his general position today [R. 110].

Petitioner was next questioned concerning certain of his California Eagle articles [R. 110, *et seq.*]. He answered general questions with respect thereto, such as whether he wrote the articles and believed they were true when written. He refused, on the basis of the freedoms of speech and press, to state his beliefs with regard to these articles today or whether he had any evidence to

support them now or at the time they were written. Petitioner was questioned with respect to Mrs. Bennett's testimony concerning his membership in the Communist Party [R. 117, *et seq.*]. He refused to deny any part thereof on the ground that it related to his political beliefs. He again refused to answer any questions with respect to his present or past membership in the Communist Party. He also reiterated his position with respect to the Committee's power to inquire under Business and Professions Code Section 6064.1:

> "Mr. Whitmore: It is not your contention, is it Mr Konigsberg, that the only basis which the Committee may rely on in determining whether or not it can certify you under the provisions of 6064.1 is by asking you the questions and getting a yes or no answer. It is not your position that that is the extent of the right of this body in making its determination under 6064.1?
>
> Mr. Konigsberg: In essence, that is it. My interpretation (fol. 204) of that code section is simply that it sets the limit as to whatever questions relating to opinion—because that is obviously a political issue—there may be asked by the Bar Examiners. It sets the limit as I interpret it. I may be wrong, as I think the SubCommittee is wrong; because of the history of this act as I have related it the Committee can only ask 'Do you now personally advocate the overthrow of the government of the United States or of this State by force or violence or other unconstitutional means' and if I say 'No,' 'Yes' or whatever it may be, that is as far as you can go; that is without raising the question on this point (which

I don't think is pertinent) as to whether that is even constitutional under the First Amendment.

Mr. Whitmore: You are saying that the Committee is precluded under Section 6064.1 from considering acts or omissions of yours in the past with respect to that problem?

Mr. Konigsberg: Yes, I think so. I am saying they can only ask do I advocate the overthrow by force or violence or other means." [R. 125-126.]

Petitioner was given the opportunity to file any additional authorities or memoranda of position which he wished [R. 129] and the hearing was closed.

The Committee of Bar Examiners considered all of the evidence before them, including the conduct and demeanor of the witness and issued their written determination that petitioner could not be certified for admission to the California Bar because he had failed to bear the burden of proving:

1. That he was a person of good moral character, and

2. That he did not advocate the violent overthrow of the government.

Applicant thereafter petitioned the Supreme Court of California for review, which review was refused without opinion, thus affirming the determination of the Committee of Bar Examiners that petitioner had failed to establish his qualifications for admittance to the California Bar.

V.

SUMMARY OF ARGUMENT.

California requires that an applicant for admission to its Bar establish:

1. He is a person of good moral character, and

2. He does not advocate violent overthrow of the state or Federal government.

The Committee of Bar Examiners is charged with the statutory duty of reviewing each applicant's qualifications for admission to the California Bar. Since, as a practical matter, it would be impossible for the Committee to conduct a detailed investigation of each applicant, or even of those applicants where doubts arise, it has long been the Committee's practice to require each applicant to establish his good moral character by removing all reasonable doubts:

> "* * * The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicion of moral unfitness, and that he is entitled to the high regard and confidence of the public."
>
> Rule X, Sec. 101, Rules Regulating Admission To Practice Law in California (see Appendix).

This procedure has been affirmed on numerous occasions by the California Supreme Court which has emphasized the necessity of candor and full disclosure by each applicant. A similar procedure is followed with respect to

whether an applicant advocates the violent overthrow of the government.

Evidence before the Committee of Bar Examiners from three independent sources, including the direct testimony of a responsible witness, indicated that petitioner was in active and sympathetic association with the Communist Party. There was also evidence through petitioner's public statements and newspaper articles directly indicating that his moral standards were deficient. In view of the established nature of the Communist Party, each of these sources properly raised serious doubts whether petitioner was a person of good moral character and whether he honestly stated that he did not advocate the violent overthrow of the government. Such doubts were reasonable and if not dispelled by contrary evidence would prevent petitioner from meeting the burden of proof required by California law. Petitioner refused to present other evidence, even his own testimony, directed to these areas of doubt and hence failed to establish his qualifications for admittance to the California Bar.

The essence of petitioner's position, as we understand it, is that all of this evidence related solely to political opinions, ideas and associations or was contained in statements published or spoken by him and that his rights under the First and Fourteenth Amendments were violated by considering such evidence or asking questions with respect thereto. In other words, the Committee may not consider or inquire into petitioner's past associations or

anything that he has said or published. Respondents submit that no such constitutional privileges exist. Numerous decisions of this Court affirm that both past and present associations may properly be considered as evidence of present fitness. As many of these same decisions affirm, this rule is not changed by the fact that petitioner chooses to call the Communist Party and similar groups "political" associations.

Similarly, petitioner's past oral and written statements may be considered. His right to make such statements is unchallenged. But, where such statements evidence association with the Communist Party or reflect deficient moral standards they may be considered.

Finally, even were this Court to hold that one or more of these sources were constitutionally privileged (which we doubt it will do), there is ample evidence from the remaining sources to justify the determination made by respondents and affirmed by the California Supreme Court.

VI.

ARGUMENT.

A. Petitioner's Claims Under the United States Constitution Were Not Duly Raised Before the California Supreme Court.

This court has repeatedly held that it has no jurisdiction to review the decision of a state court unless the petitioner has affirmatively shown that the Federal claim or question was properly presented to the highest court of the state having jurisdiction.

Lynch v. New York, 293 U. S. 52;

Honeyman v. Hanan, 300 U. S. 14;

Southwestern Bell Telegraph Co. v. Oklahoma, 303 U. S. 206.

In order for a question to have been properly presented to the higest court of the state, it must have been presented and preserved in the manner prescribed by the appellate practice of the state. If this was not done, this court has no jurisdiction.

Edelman v. California, 344 U. S. 357, 358;

John v. Paullin, 231 U. S. 583;

Central Union Telephone Company v. City of Edwardsville, 269 U. S. 190;

Hulbert v. City of Chicago, 202 U. S. 275;

Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291.

It is well established California practice that a question is not properly presented and need not be considered by the California Supreme Court unless it is specifically set forth for the consideration of the Court and is supported by written argument and citation of authori-

ties in Petitioner's brief before the California Supreme Court.[2]

People v. McLean (1902), 135 Cal. 306.

"We again repeat what we have said before, that we will not examine alleged errors presented in this way. It is due to this court from the members of the bar to point out clearly and concisely the rulings complained of as erroneous and the reasons why they are so, with reference to authorities, if any. In case counsel will not take the trouble to do so, we shall deem the matter as of not sufficient importance to merit notice in an opinion (*People v. Woon Tuck Wo*, 120 Cal. 297)."

People v. McLean, 135 Cal. 306, 309.

Title G. & T. Co. v. Fraternal Finance Co., 220 Cal. 362.

"Appellate courts will notice only those assignments pointed out in the brief of an appellant, all others are deemed to have been waived or abandoned. * * *"

Title G. & T. Co. v. Fraternal Finance Co., 220 Cal. 362, 363.

Johnson v. State Bar, 4 Cal. 2d 744.

"With respect to the constitutionality of the act, petitioner says it is unconstitutional, without the citation of authority or an argument other than an attack upon the methods of The State Bar. It is a

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[2]For obvious reasons, in criminal cases the California courts generally depart from this practice and will correct any error coming to their attention. However, as was pointed out by Mr. Justice Brandeis in a concurring opinion in *Whitney v. California*, 274 U. S. 357, 380, even in a criminal case this Court does not have a similar power to reverse on the basis of an issue not briefed in the California courts.

rule, well settled, that such a presentation of the subject is insufficient to require us to pass upon the points suggested. * * *"

Johnson v. State Bar, 4 Cal. 2d 744, 758.

Everts v. Sunset Farms, Inc. 9 Cal. 2d 691.

"The defendants' points 8, 9, 10 and 11 are stated, but no part of the record is quoted, no authorities are cited, and no argument is set forth in support of any one of said points. Under such circumstances a court of review will not search a record for the purpose of finding something on which to base an order of reversal."

Everts v. Sunset Farms, Inc., 9 Cal. 2d 691, 700.
Bradley v. Butchart, 217 Cal. 731.

"* * * 'An appellate court cannot assume the task of discovering the error in a ruling and it is the duty of counsel by argument and the citation of authority to show the reasons why the rulings complained of are erroneous. Contentions supported neither by argument nor by citation of authority are deemed to be without foundation and to have been abandoned.' (2 Cal. Jur. 732; *People v. McLean*, 135 Cal. 306 [67 Pac. 770]; *People v. Broyles*, 113 Cal. App. 390 [298 Pac. 131].)"

Bradley v. Butchart, 217 Cal. 731, 747.

Webster v. Board of Dental Examiners, 17 Cal. 2d 534.

In petitioner's reply brief supporting his petition for certiorari, he sets forth all of the instances in which he alleges that he raised the Federal issue before the California Supreme Court as follows:

1. *Committee Hearings*:—On a number of occasions at the Committee and Subcommittee hearings he refused

to answer questions on the basis of a claimed right under the First Amendment not to answer such questions. In a single instance he asserted that refusing him admission without informing him of any findings of fact infringed his rights under the Fourteenth Amendment. It would seem clear that raising a constitutional issue at the Committee hearings is not equivalent to raising it before the California Supreme Court.

2. *Petition to California Supreme Court to Review Denial of Admission:*—Petitioner summarily contended in Points 9 through 11 that denial of his application violated his rights under the First, Fifth and Fourteenth Amendments.

3. *Briefs Before the California Supreme Court:*—

(a) The summary of facts included a statement that when the Committee asked if he were a member of the Communist Party he declined to answer on the ground that this invaded his constitutional rights under the First Amendment.

(b) At page 41 of the argument a single phrase, following two pages of argument why failure to advise applicant of the nature of the information against him was in error under California law, indicated that this also denied him due process. This was not supported by any additional argument why or how he was thereby denied due process or by any citation of authorities. Moreover, since California has a due process clause (Cal. Const. Article I, Section 13), under the decision of this Court in *Bowe v. Scott*, 233 U. S. 658, reference to due process without specifying that the Federal Constitu-

iton is being referred to will be deemed to relate to due process under the California Constitution.

It would seem to be beyond dispute that the above claims were insufficient to raise even a single Federal Constitutional issue in the manner required by California law.

Petitioner argues (Pet. Br. p. 18 *et seq.*) that under Section 25 of the Judiciary Act of 1789 (now 28 U. S. C., Sec. 1257), it is not necessary to specifically set forth the constitutional grounds on which you rely. It is our understanding of such cases that they refer to situations where the constitutional issue was actually before the court though not presented in precise constitutional language. They are not intended to apply where, as here, it is not the degree of preciseness with which the constitutional issues were framed and argued, but the failure to argue them at all which is objected to. However, even assuming that we give petitioner's authorities the broad construction which he urges and assume that the brief references in his petition were sufficient to frame the constitutional issue, he thereafter failed to preserve it as required by California law—*i.e.*, he failed to argue it in his briefs with appropriate citation of authorities where available. Petitioner's own authorities—*e.g.*, *New York Exrel Bryant v. Zimmerman*, 278 U. S. 63, 68-71—recognize that the rule they state whereby this Court will accept jurisdiction even though the constitutional issue was not stated with precision do not apply unless the state requirements have been met. Since petitioner's brief contained no argument of the constitutional issue and no citation of supporting authorities, he failed to meet the state requirements in presenting the constitutional issue to the

California Supreme Court. The United States Supreme Court therefore has no jurisdiction.

Edelman v. California, 344 U. S. 357, 358;

Hulbert v. City of Chicago, 202 U. S. 275;

John v. Paollin, 231 U. S. 583, 585;

Central Union Telephone Company v. City Edwardsville, 269 U. S. 190, 194-195.

The only limitation on this rule is that the state procedure provides a reasonable opportunity for the constitutional issue to be heard. It scarcely need be added that the California procedure requiring the point not only to be raised but to be briefed, argued and supported with authorities wherever available, does not deny a reasonable opportunity for the issue to be heard.

Hulbert v. City of Chicago, 202 U. S. 275, 281.

[Illinois practice regarded errors assigned but not noticed or relied on in the brief or argument as waived or abandoned.]

It may be noted that the above discussion gives petitioner the full benefit of all references which he claims to have made to his rights under the Federal Constitution, including those in his brief before the California Supreme Court. We feel that this is appropriate since the briefs of both petitioner and respondents before this Court have discussed and admitted the extent to which the briefs before the California Supreme Court referred to the constitutional issues. Moreover, the California Supreme Court briefs were designated by petitioner as part of the record, were not objected to by respondents, and were duly certified to this Court by the California Supreme Court.

However, were petitioner's argument accepted so that *Maryland Casualty Co. v. Jones*, 279 U. S. 792, was applied to prevent consideration of either the California Supreme Court briefs or concessions in the briefs before this Court with respect thereto, it does not strengthen petitioner's case. It is the affirmative duty of petitioner to establish that he duly presented the constitutional question to the State Supreme Court in accordance with its procedure. Whether or not petitioner's brief in the California Supreme Court may be considered, he has not, and cannot establish that this was done.

B. The Denial of the Petitioner for Writ of Review by the California Supreme Court Was a Final Judgment Within the Meaning of 28 U. S. C., Section 1257.

California Business and Professions Code Section 6066 provides:

> "§6066. *Court review of refusal to certify examined applicant.* Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court."

Rule 59(b) of the Rules of the California Supreme Court provides:

> "A petition to the Supreme Court to review any other action of the Board of Governors of The State Bar, or of any committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act shall be filed within 60 days after written notice of the action complained

of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of The State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service on the Board of Governors of 3 copies of the petition and the brief. Within 10 days after service of the petition, the Board of Governors may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered the Board of Governors, at least 20 days before the return day, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which 3 copies shall have been served on the Board of Governors."

Petitioner herein (Pet. Br. pp. 22-24) concludes that the decision of the State Supreme Court herein was final. Respondents concur in that conclusion but since jurisdiction does not depend upon agreement, we submit the following additional factors.

The Order of the California Supreme Court stated that the petition for Writ of Review was denied, with three members of the Court indicating their belief that the Writ should issue [R. 132]. On its face this could be taken as merely a refusal by the Court to exercise its discretionary jurisdiction. However, Section 6066 of the Business and Professions Code, *supra*, which is the statute as distinct from the Rule, provides that an aggrieved applicant ". . . may have the action of the Board . . . reviewed by the Supreme Court . . ." This appears to be a right, and not merely a privilege of asking for a review, leaving only the procedure to be prescribed by the Court.

This Court, in its Order granting the Writ of Certiorari herein referred to *Salot v. The State Bar,* 3 Cal. 2d 615. This case does not appear to involve a review under the statute above quoted nor to come under Rule 59(b), but is described in the opinion as a proceeding for admission to practice as an attorney at law notwithstanding a lack of certification by the Committee of Bar Examiners. The opinion describes the mechanics there adopted which are the traditional steps with respect to a discretionary Writ, using the normal terminology. In that case an Order to Show Cause was issued and upon such order the respondent Bar filed its return and presented the record. On the merits the petition was dismissed.

The *Salot* case was a direct appeal to the inherent power of the Court over the members of the Bar irrespective of the statute and Rule above noted. It did, in form and substance, involve an appeal to the discretionary powers of the Court, and cannot be taken as a direct parallel to the procedure involved herein, brought under the statute and in accordance with the Rule. In the present case, as petitioner notes (Pet. Op. Br. p. 32) the State Supreme Court had before it the entire record in the first instance, and the references in the briefs of the parties were to that record.

Under such circumstances Respondents feel that the action of the California Supreme Court was an acceptance and approval of the action of the Committee of Bar Examiners as set forth in the record, and was a final judgment within the meaning of 28 U. S. C., Section 1257. The fact that Petitioner here might have adopted and might still adopt the entirely different approach indicated in *Salot v. State Bar, supra,* does not militate against the finality of the present order of the State Supreme Court.

C. The Determination of the Supreme Court of California Was Not Based Upon a Rejection of Claims Arising Under the Fourteenth Amendment.

It is well established that this Court's jurisdiction cannot be founded upon a mere surmise that the State Court's decision turned upon a Federal question. It must appear affirmatively from the record or by fair implication that the judgment as rendered could not have been given without deciding the Federal question.

Southwestern Bell Telephone Co. v. Oklahoma, 303 U. S. 206;

Lynch v. New York, 293 U. S. 52;

Adams v. Russell, 229 U. S. 353.

This petition, therefore, should be disposed of by the basic rule, wisely adopted and consistently followed, that this Court will not take jurisdiction to review a judgment of a state court where the judgment could have rested on either a Federal or a state ground.

As was stated in *Stembridge v. Georgia*, 343 U. S. 541, 547, 548:

"* * * Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment.

* * * * * * * *

"* * * We are without jurisdiction when the question of the existence of an adequate state ground is debatable. Batchtel v. Wilson, 204 US 36, 51 L ed 357, 27 S Ct 243."

Stembridge v. Georgia, 343 U. S. 541, 547, 548.

In the present case not only has petitioner failed to affirmatively establish, as he must, that the decision of the California Supreme Court was based upon a rejection of the claims arising under the Federal Constitution, but, on the contrary, the record provides convincing evidence that the decision not only could have been, but in fact was, based upon adequate state grounds.

Petitioner's brief before the California Supreme Court argued the following points:

1. Applicant sustained his burden of proving good moral character. Under this heading he argued that good moral character should be construed as limited to criminal conduct and not to include activities such as those of petitioner, but in no way suggested that it was constitutionally improper to consider any such activities.

2. The burden of proof under Business and Professions Code Section 6064.1 falls upon the Committee of Bar Examiners not on the applicant.

3. If the burden of proof under Section 6064.1 is on the applicant, petitioner's evidence outweighed that of the Committee so that he sustained the burden of proof.

4. The Committee erred under its own rules by not advising petitioner of the evidence against him.

These same points were again argued in petitioner's reply brief before the California Supreme Court. Like his opening brief, the reply brief failed to explicitly or implicitly raise any constitutional argument.

Respondents submit that it could therefore be assumed that the California Supreme Court rested its decision on

the points argued by petitioner and not upon the constitutional issues which he now seeks to raise.[3]

In granting the writ of certiorari, this Court particularly invited counsel's attention to the evidence summarized at pages 5 through 8 of respondents' brief in opposition to the petition for the writ of certiorari. We assume that this reference broadly includes all of petitioner's California Eagle articles whether considered as indirect evidence of his Communist Party affiliation or directly for their reflections on the standards of morality he had adopted and hence on his good moral character.

Such articles were given serious consideration by respondents as relevant to good moral character and, to a lesser extent, with respect to advocacy of violent overthrow of the government. As is set forth in subsection F, below, respondents firmly believe that consideration of such articles in no way infringed petitioner's constitutional rights. However, whether or not this is true, two points would seem beyond dispute:

1. Petitioner at no time objected to the introduction or consideration of these articles.[4] The issue of whether his rights were thereby infringed is therefore not properly before this Court.

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[3]The recent decision of this Court in *Black v. Cutter Laboratories*, 351 U. S. 292 held that construing the term "just cause" in an employment contract to include membership in the Communist Party involves the construction of a contract under local law and does not raise a Federal question. Construing "good moral character" as allowing consideration of evidence of Communist associations, etc., similarly involves a question of local law and does not raise any substantial Federal question.

[4]On numerous occasions petitioner refused to answer questions with respect to these articles on the ground that the questions infringed his constitutional rights, but he did not extend his objection to the articles themselves.

2. There was ample evidence to sustain the California Supreme Court's determination without any consideration being given to the California Eagle articles or any questions asked with respect thereto. Indeed, the direct testimony of Mrs. Bennett that petitioner was an active member of the Communist Party, coupled with petitioner's refusal to explain, deny or produce any relevant evidence to refute, is in itself fully sufficient to support the California Supreme Court's determination that petitioner had failed to establish his good moral character. Even more clearly such evidence is sufficient to warrant refusing to believe petitioner's unsupported statement that he did not advocate the violent overthrow of the government.

Thus, even were this court to feel, contrary to the law as we understand it, that it was constitutionally improper for respondents to consider petitioner's newspaper articles, there is nothing to indicate that the decision of the California Supreme Court rested on such evidence and, on the contrary, it would seem clear that there were ample independent grounds on which the California Supreme Court's decision could and did rest.

Moreover, as set forth in more detail in subsection A, *supra*, petitioner failed to raise the Federal constitutional issues in the manner required by California procedure in that he failed to specifically set forth the constitutional issues and support them with arguments or authorities.

Such noncompliance with the local procedure is an adequate state ground upon which the decision of the California Supreme Court can rest. This court has consistently held that where such a ground exists, this Court will not take jurisdiction unless the highest court of the state issued an opinion and the opinion affirmatively

showed that the constitutional issues were considered and passed upon despite the failure to follow local procedure. This was not done here.

Edelman v. California, 344 U. S. 357;

Hulbert v. City of Chicago, 202 U. S. 275;

Mutual Life Ins. Co. of New York v. McGrew, 188 U. S. 291.

Respondents submit that for the reasons set forth above the writ should be discharged as improvidently granted.

D. Petitioner Was Given a Full and Fair Hearing at Which He Was Advised of All Evidence Considered by the Committee as Raising Doubts Concerning His Qualifications for Admission and Was Given Every Opportunity to Dispel Such Doubts.

Petitioner has seen fit to convey the impression that respondents treated him with something less than complete fairness. Thus, he suggests that the Committee retained evidence raising doubts as to his moral fitness in its files for three long years during which time it allowed him to study law at great personal sacrifice and then capriciously or deliberately called him before it for hearing just sixteen days before he was scheduled to take the Bar examination (Pet. Br. 11, 37). Subsequently (Pet. Br. 53-55), he suggests that the procedure adopted by the Committee denied him procedural due process through failing to advise him of the evidence against him or informing him wherein he failed to meet his burden of proof. Since the fairness with which petitioner was treated necessarily permeates all issues in this case, respondents feel it necessary to specifically meet these suggestions even though even a cursory examination of the record shows that they are without basis:

1. *Time of Review:*—Respondents have set forth their general admission procedure in the Appendix. For the reasons there set forth it is necessary to make the determination with respect to standards such as good moral character and advocating the violent overthrow of the government during the four-month period between the time an applicant files for admission to the Bar and the date he takes the Bar examination. This question arose at the hearings and petitioner was advised of the California procedure [R. 107-109]. It is somewhat surprising that he now sees fit to again imply that the Committee acted arbitrarily or improperly in this respect.[5]

2. *Committee Hearings:*

(a) *Petitioner Was Advised of All Adverse Information Considered by the Committee:*—Respondents will not attempt to discuss whether, as suggested by petitioner, procedural due process requires the applicant to be advised of all adverse evidence. Whether or not such a constitutional requirement exists, the Committee's rules and practices so require and petitioner was fully advised of all evidence considered by the Committee as having any adverse bearing either on his good moral character or his advocacy of violent overthrow of the government. Like any other trier of fact, the Committee properly considered intangibles such as the demeanor of the witnesses at the hearings. But, with this exception, all evidence con-

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[5]Petitioner has not mentioned the numerous small courtesies extended to him by the Committee. For example, at his request the hearings were adjourned until after the Bar examination and he was given special permission to take the exam even though he had not yet established his qualifications to do so. Moreover, he claimed that he had a muscular condition which would handicap him were he required to write or type the examination in the normal manner and was granted permission to dictate his answers to a professional typist.

sidered was formally presented at the hearings and appears in the record. The principal sources of doubt were:

(1) Testimony of Alice King Bennett that petitioner was an active member of the Communist Party [R. 42-57].

(2) California Eagle articles written by the petitioner [Com. Ex. 1; R. 133; R. 8-11, 97, *et seq.*].

(3) Petitioner's testimony before and statement to the California Senate Fact Finding Committee on UnAmerican Activities [Com. Exs. 2 and 3; R. 247, 256; R. 12-15, 97, *et seq.*].

(4) Questions by the Committee giving petitioner every opportunity to deny, explain, comment on, or supplement any of the other evidence presented, and petitioner's answers or refusals to answer these questions.

(b) *Petitioner Was Advised Wherein He Was Failing to Meet the Burden of Proof:*—Petitioner cites no authority for his assertion that procedural due process required the Committee to advise him that he was failing to meet the burden of proof or in what particulars he might meet this burden of proof. Respondents are clearly of the opinion that there is no such constitutional requirement. However, were there such a requirement, the record shows that it was met. Not only were the areas of doubt made amply clear by the evidence introduced and the questions asked, but the record is replete with attempts by Committee members to advise petitioner of their position and wherein he was failing to meet the burden of proof. Thus respondents repeatedly advised petitioner that they felt they had a right to inquire into the nature

and extent of his association with the Communist Party and that he was jeopardizing his right to admittance to the Bar by refusing to answer such questions; that as an applicant seeking admission to the Bar, the burden of proof was on him to establish his qualifications and that his refusals to answer were preventing this; that the Committee did not agree with his position that he had a constitutional privilege not to answer; that the Committee did not agree with his contentions as to the scope of their inquiry into good moral character and advocacy of violent overthrow of the government under California law, etc. [R. 28-29, 30, 34, 35-37, 76, 78, 113, 116, 118, 122, 123-124, 127].

3. *Petitioner Was Given a Full and Fair Hearing:*— It is impossible to review the record without being fully aware of the fairness extended to Mr. Konigsberg at all times. Indeed this fairness was voluntarily commented upon by petitioner's own counsel towards the end of the Committee hearing:

> "Mr. O'Donnell: There was some suggestion that the Subcommittee was not fair at the previous hearings.
>
> "Mr. Mosk: May I interrupt immediately. There was no inference in any comments made by Mr. Konigsberg or myself. They were solely directed to the decision of the Subcommittee and our disagreement with the ultimate results. The Committee was absolutely fair and treated Mr. Konigsberg and myself with the utmost degree of fairness and impartiality. We have no complaints about the Subcommittee."

Respondents submit that petitioner's assertion that he was denied procedural due process is completely without merit.

E. Every State Has Broad Powers to Determine the Personnel of Its Bar. The Standards For Admission Adopted by California in No Way Infringe Petitioner's Federally Protected Rights.

1. This Court Will Not Interfere in a State's Selection of Personnel for Its Bar Unless a Federally Protected Right Has Clearly Been Infringed.

Most courts have referred to the practice of law as a "privilege" rather than as a "right" in order to emphasize the power of the state to impose reasonable conditions upon it.

As was once stated by Mr. Justice Cardozo:

> "Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. * * *. (Citing cases.) Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness * * *."
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> *In re Rouss*, 221 N. Y. 81, 116 N. E. 782;
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> *In re Admission to Law* (1934), 1 Cal. 2d 61, 67;
>
> *Cohen v. Wright* (1863), 22 Cal. 297, 319.

Petitioner has argued at some length that the practice of any profession, including law, is a right. Lest the real issue be thus obscured, Respondents submit that it is unimportant whether the label "right" or "privilege" is applied. Petitioner cannot deny that the primary responsibility for selecting the personnel of its Bar rests

with the State of California and that California may prescribe the conditions under which admission will be allowed. Respondents for their part freely admit that in prescribing and applying these conditions, California must give every applicant a fair opportunity to establish that he meets these conditions and may not impose conditions which are either manifestly arbitrary and unfair or are in unlawful contravention of a federally protected right, such as freedom of religion or freedom of speech. The only questions which should be at issue is the breadth of the constitutional restrictions upon California's undisputed right to prescribe qualifications for members of its Bar.

Selection of the personnel of its Bar is a matter which is peculiarly within the cognizance of each state. Not only are attorneys officers of the court, but they occupy a peculiar position of trust and leadership within the state. Every year hundreds of applicants throughout the country are refused admission to the Bars of the various states because they fail to establish that they possess the qualifications required for admission. The limited extent[6] to which this court will interfere is well illustrated by *Re Summers*, 325 U. S. 561, where the Committee of Character Fitness for the State of Illinois refused to

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[6]Though petitioner suggests it would jar the sensibilities and mores of our time to deny admission to the Bar based on a person's sex (Pet. Br. 39), and we wholeheartedly agree, it is interesting to note that this Court has twice refused to interfere with state action refusing admission to the Bar on this basis.

Bradwell v. Illinois, 16 Wall (83 U. S.) 130;
Re Lockwood, 154 U. S. 116.

certify applicant's moral character and fitness because he was a conscientious objector whose beliefs forbade his using force to prevent wrong. He could not therefore swear in good faith to support the Illinois Constitution because he was unwilling to do so by force of arms. It was not disputed that his belief was sincere and that it was based on his religion, nor was it disputed in all other respects that he was fully qualified to practice law. This court refused to reverse the action taken by Illinois:

> "The responsibility for choice as to the personnel of its bar rests with Illinois. Only a decision which violated a federal right secured by the Fourteenth Amendment would authorize our intervention. It is said that the action of the Supreme Court of Illinois is contrary to the principles of that portion of the First Amendment which guarantees the free exercise of religion. Of course, under our Constitutional system, men could not be excluded from the practice of law, or indeed from following any other calling, simply because they belong to any of our religious groups, whether Protestant, Catholic, Quaker or Jewish, assuming it conceivable that any state of the Union would draw such a religious line. We cannot say that any such purpose to discriminate motivated the action of the Illinois Supreme Court."
>
> *Re Summers*, 325 U. S. 561, 570, 571.

2. The Standards of Admission Selected by California Are Constitutional in All Respects.

Petitioner has been refused admission to the California Bar because he failed to establish:

(a) That he is a person of good moral character, and

(b) That he does not advocate the violent overthrow of the Federal government or that of the State of California.[7]

It has long been established that an applicant for admission to practice law may be required to be a person of good moral character.

Cohen v. Wright, 22 Cal. 297;

Re McDonald, 200 Ind. 424, 164 N. E. 261.

Cases Collected:

28 A. L. R. 1140;

72 A. L. R. 929.

It is, of course, up to the courts of each state to define good moral character, subject to review by this court should the definition given violate a right protected under the Fourteenth Amendment.[8]

The definition adopted in California stresses elements of honesty, fairness and respect for the rights of others and for the laws of the state and nation. Business and

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[7]An additional ground never specifically relied on by respondents but on which the California Supreme Court's determination could rest is that it properly had doubts whether petitioner could honestly take oath of allegiance required by Business and Professions Code Section 6065.

[8]Petitioner has discussed at some length (Pet. Br. 42, *et seq.*) the definition which he feels should be given to good moral character and which we note includes many of the elements considered by respondents. However, it should be stressed that the definition adopted by respondents has been affirmed by the California Supreme Court so that the question before us now is not how good moral character should be defined, but whether the definition approved by the California Supreme Court was unconstitutional—or more accurately, since petitioner prevented a final determination of whether he was of good moral character, whether the areas of inquiry in which respondents sought or received evidence were relevant to any constitutional definition of good moral character.

Professions Code Section 6068 defines the duties of an attorney in California and suggests many of the elements of good moral character:

"§6068 *Duties as an attorney.* It is the duty of an attorney:

"(a) To support the Constitution and law of the United States and of this State.

"(b) To maintain the respect due to the courts of justice and judicial officers.

"(c) To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

"(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

"(e) To maintain inviolate the confidence, and at every peril of himself to preserve the secrets, of his client.

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

"(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

"(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed."

Cal. Bus. and Prof. Code, Sec. 6068.

Respondents submit that there can be no question that good moral character as thus defined can be required of applicants for admission to the California Bar.[9]

We do not understand even petitioner to contend that a state may not demand the allegiance and loyalty of an applicant for admission to the Bar, at least to the extent of establishing that he does not advocate the violent overthrow of the government of his state and nation. However, whether or not petitioner agrees, we deem it indisputable that a state may properly require such loyalty. General oaths of allegiance are required in every state and numerous states have imposed additional requirements of loyalty, including that the applicant does not advocate the violent overthrow of the government, by statutory construction of the general requirements of character and fitness.

In re Anastaplo, 3 Ill. 2d 471, 121 N. E. 2d 826, cert. den. 348 U. S. 946, reh. den. 349 U. S. 908;

Application of Cassidy, 51 N. Y. S. 2d 202, aff'd 296 N. Y. 926, 73 N. E. 2d 41;

Martin v. The Law Society, 3 Dominion Law Reports 173;

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[9]Since petitioner by his refusal to answer questions or produce other evidence with respect to broad areas of Committee inquiry, forced a determination that he had failed to bear the burden of establishing his good moral character rather than allowing a determination of whether he was of good moral character, the real question before us is not whether a particular definition of good moral character which Respondents might have had in mind was constitutional, but whether the areas of inquiry were so irrelevant to any constitutional definition of good moral character that the Committee could not properly consider or request evidence in these areas. As will be discussed below, the areas of inqury were both relevant and proper.

2 U. C. L. A. L. Rev. 224;

In re Patterson (Ore. Sup. Ct., Oct. 10, 1956), 25 U. S. Law Week 2201.

This Court approved the far more extreme requirement of requiring an applicant to be willing to support the constitution by force of arms despite religious convictions to the contrary in *Re Summers,* 325 U. S. 561. There would seem to be no question that the lesser requirement of not advocating its violent overthrow should also be upheld.

F. The Evidence Considered by Respondents Was Relevant to Its Inquiry Whether Petitioner Was a Person of Good Moral Character and Could Truthfully State That He Did Not Advocate the Overthrow of the Government by Force or Violence. There Is No Constitutional Bar to the Consideration of Such Evidence.

Petitioner was denied admission to the California Bar because:

1. Evidence before the Committee raised doubts whether he was a person of good moral character and could truthfully state that he did not advocate the violent overthrow of the government, and

2. Petitioner's actions before the Committee increased rather than dispelled these doubts so that he failed to affirmatively establish his qualifications as required by California law.

The record shows that two general types of information were the original source of the Committee's doubts:

(a) Direct testimony that petitioner was an active member of the Communist Party and indirect

corroboration of such membership and his acceptance of and participation in its activities, ideals and objectives.

(b) Evidence indicating that petitioner's standards with regard to matters such as truth, honesty and general morality were such that he could not be considered a person of good moral character and that his unsupported declaration that he did not advocate the violent overthrow of the government could not be accepted as conclusively establishing that he did not advocate the violent overthrow of the government.

Respondents respectfully submit that such evidence was relevant to the Committee's inquiry and that consideration of such relevant evidence in no way violated petitioner's constitutional rights. They also submit that their further inquiry into these areas of doubt was proper and in no way infringed petitioner's constitutional rights.

1. Information Indicating That Petitioner Was a Member of, and in Sympathetic and Active Association With, the Communist Party Was Relevant to a Determination of Good Moral Character. This Relevancy Arose From the Nature of the Activities, Objectives, and Standards of Conduct Adopted by the Communist Party.

The events of the past fifteen years have established that the Communist Party is not a "political party" but a criminal conspiracy dedicated to the establishment of Communism in the United States by any means at their disposal. Legislative findings confirming this have been made by the United States Congress and the Legislature of the State of California.

The Communist Control Act before proceeding to deny to the Communist Party the rights, privileges and immunities given to legal bodies such as legitimate political parties states:

> "The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. * * *"
>
> 68 Stat. 775, 50 U. S. C. Sec. 841 (Supp. 1954).

Similarly in adopting the Internal Security Act of 1950, it found:

> "As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress finds that—
>
> "(1) There exists a world-wide Communist movement which in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.
>
> "(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality. . . .

"(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement. . . .

"(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States."

64 Stats. 987, 50 U. S. C. Sec. 781.

Similar findings have been made in California:

"(a) There exists a world-wide revolutionary movement to establish a totalitarian dictatorship based upon force and violence rather than upon law.

* * * * * * * *

"(d) Within the boundaries of the State of California there are active disciplined communist organizations presently functioning for the primary purpose of advancing the objectives of the world communism movement, which organizations promulgate, advocate, and adhere to the precepts and the principles and doctrines of the world communism movement. * * *

"(e) One of the objectives of the world communism movement is to place its members in state and local government positions and in state supported educational institutions. * * *

"There is a clear and present danger, which the Legislature of the State of California finds is great and imminent, that in order to advance the program, policies and objectives of the world communism movement, communist organization in the State of California and their members will engage in concerted effort to hamper, restrict, interfere with, impede, or nullify the efforts of the State and the public agencies of the State to comply with and enforce the laws of the State of California and their members will infiltrate and seek employment of the State and its public agencies. (Added Stats. 1953, c. 1646, p. 3366, Sec. 1.)"

Cal. Gov. Code, Sec. 1027.5.

Judicial findings and comments have confirmed these legislative findings. The following are illustrative:

"The jury found that the Party rejects the basic premise of our political system—that change is to be

brought about by nonviolent constitutional process. The jury found that the Party advocates the theory that there is a duty and necessity to overthrow the Government by force and violence. It found that the Party entertains and promotes this view, not as a prophetic insight or as a bit of unworldly speculation, but as a program for winning adherents and as a policy to be translated into action."

Dennis v. United States, 341 U. S. 494, from concurring opinion of Mr. Justice Frankfurter at pages 546-7.

"The Communists have no scruples against sabotage, terrorism, assassination, or mob disorder; but violence is not with them, as with the anarchists, an end in itself. The Communist Party advocates force only when prudent and profitable. Their strategy of stealth precludes premature or uncoordinated outbursts of violence, except, of course, when the blame will be placed on shoulders other than their own. They resort to violence as to truth, not as a principle but as an expedient."

Dennis v. United States, 341 U. S. 494, from concurring opinion of Mr. Justice Jackson at page 564.

"1. *The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate.* * * *

"2. *The Communist Party alone among American parties past or present is dominated and controlled by a foreign government.* * * *

"3. *Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal.* * * *

"4. *The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement.* * * *

"5. *Every member of the Communist Party is an agent to execute the Communist program.* * * *"

American Communications Assoc. v. Douds, 339 U. S. 382, from concurring and dissenting opinion of Mr. Justice Jackson at pages 425-431.

When a group acquires a general reputation for objectives, standards and activities such as those set forth above, when this reputation is affirmed by legislative and judicial findings, and when scores of the leaders of this group are convicted and sent to prison for violation of our laws, Respondents submit that the nature and extent of a prospective attorney's association with that group is relevant to a determination of his good moral character. Such evidence may therefore be sought and considered by Respondents unless there is a specific statutory privilege protecting a particular source of such evidence. That there is no such constitutional privilege will be established in subsection 5 *infra*.

Respondents have never, and do not now, take the position that past membership in the Communist Party necessarily disqualifies an applicant from admission to the California Bar. Respondents do not foreclose the possibility that such membership could be shown to be innocent and without knowledge of or participation in, the illegal and immoral aims, ideals and activities of the Party, nor do they foreclose the possibility that an individual has broken with the Party and has re-established his good moral character. But Respondents again affirm that evidence of both past and present membership is relevant to their inquiry and properly raises doubts

whether an applicant is of good moral character. Failure of Petitioner to explain or deny evidence of such membership properly heightens these doubts.

2. Information Indicating That Petitioner Was a Member of and in Sympathetic and Active Association With the Communist Party Was Relevant to a Determination of Whether Petitioner Advocated the Overthrow of the Government by Force and Violence or Other Unconstitutional Means.

The discussion and authorities set forth above are equally applicable here. The Communist Party has acquired the general reputation of advocating the violent overthrow of the government. This reputation is supported by legislative findings and findings of courts and juries in convicting numerous Communist leaders for advocating or conspiring to teach and advocate the violent overthrow of the government. Respondents submit that the nature and extent of the prospective attorney's association with such a group is relevant to a determination of whether he satisfies the statutory requirement that he does not advocate the violent overthrow of the government.

Respondents stress that it is not their position that evidence of membership in the Communist Party proves that a person personally advocates the violent overthrow of the government and hence automatically bars him from admission to the California Bar. For example, an applicant might establish that despite such membership he has never personally advocated the violent overthrow of the government or that, though once advocating it, he no longer does so. But, evidence of membership in the Communist Party is relevant to a determination of whether an applicant advocates the violent overthrow of the government. If such evidence is neither denied nor satis-

factorily explained, it properly raises doubts whether the applicant could truthfully state that he does not advocate the violent overthrow of the government.

3. Evidence Indicating That Petitioner's Standards of Truth, Honesty and General Morality Were Deficient Was Relevant to a Determination Whether He Was a Person of Good Moral Character.

In addition to the evidence of association with the Communist Party, Respondents considered a number of public statements by petitioner (*e. g.*, in his California Eagle articles and in his statements to the California Senate Committee on UnAmerican Activities) directly suggesting that petitioner was not a person of good moral character. Illustrative statements are set forth in the Statement of Material Facts.

It is not unusual for public figures to be attacked, and even the Courts must bear their share of abuse. Respondents do not deny petitioner the right to make such statements, nor do they deny him admission to the Bar solely because he made them.

However, respondents could not ignore the fact that petitioner repeatedly made violent attacks on the character and integrity of the Courts and other responsible persons in statements which appeared to be patently incorrect and which suggested that they were made without evidence to support them and with indifference to their truth or falsity.

The duties of an attorney in California include:

"It is the duty of an attorney:

* * * * * * * *

"(b) To maintain the respect due to the courts of justice and judicial officers.

* * * * * * * *

"(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

* * * * * * * *

"(f) to abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged."

Cal. Bus. & Prof. Code, Sec. 6068.

If made as an attorney, such statements would be grounds for disbarment. The fact that they were not made as an attorney, but as a newspaper man, was taken into account and petitioner was given every opportunity to show either that he had evidence to support his charges or that he would adopt different standards today as an attorney. He refused to do so.

Respondents submit that making such statements are an expression of petitioner's moral standards and are relevant to determination of his good moral character. Whether they were made with evidence to support them and reflect respondents' standards today are similarly relevant.

4. There Is No Constitutional Bar to Consideration of Newspaper Articles Written by Petitioner Where Relevant to Respondents' Inquiries. Similarly, There Is No Bar to the Consideration of Statements Made by Petitioner to the California Senate Committee on Un-American Activities.

As previously indicated, the California Eagle articles were introduced into evidence without any objection by petitioner. In fact, petitioner himself introduced a complete set of his California Eagle articles. He relied on such articles as evidence on his behalf whenever it was to his advantage to do so. Thus, if any constitutional privilege preventing consideration of these articles existed, it was effectively waived. But, in any event, there is no such constitutional privilege.

Respondents do not question petitioner's constitutional right to publish articles of the type considered. It may be assumed that California has no power either to prevent their publication or to subsequently punish petitioner for making such statements. (*Pennekamp v. Florida* (1945), 328 U. S. 331.) But this is not the issue before us.

Newspaper articles are no different than any other form of human expression in that the writer must expect to be judged by the contents of his articles. One's writings may give him the reputation of being honest, fearless and fair or of being irresponsible, dishonest and unfair. This is the use which respondents made of petitioner's articles.

Whether respondents agree or disagree with the contents of the articles is immaterial. The crucial question is whether they reflect standards of responsibility, honesty and fair play indicating that petitioner was or was not a person of good moral character. The fact that a person

is privileged to perform an act does not mean that the manner in which he performs that act may not be considered as an expression of his moral standards and hence as evidence of his good moral character.[10]

N.L.R.B. v. Pick Mfg. Co., 135 F. 2d 329;
N.L.R.B. v. M. E. Blatt Co 143 F. 2d 268;
United States v. Orth, 51 Fed. Supp. 682, reversed on other grounds. 142 F. 2d 969.

The discussion above is equally applicable to petitioner's statements to the California Senate Committee on UnAmerican Activities. We fully recognize petitioner's right to hold any belief he wishes and to make even irresponsible and unfair statements without prior restraint. But, to the extent that such statements are made without basis and with disregard for the rights of others, they indicate a defect in petitioner's moral standards and may properly be considered as evidence of his good moral character.

Petitioner was given every opportunity to show that he had evidence to support such statements or even that he honestly believed they were true when he made them. He failed to do so. He also failed to indicate whether the making of irresponsible statements without any basis therefor reflected his standards today. Respondents submit that they can properly draw the inference from his failure to answer such questions that the answers would have been adverse and may consider this as additional evidence supporting their determination.

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[10]As noted above, petitioner was given every opportunity to show that his standards as an attorney would be higher than those he apparently adopted as a newspaperman immediately preceding and during his law school career. He made no attempt to do so.

5. There Is No Constitutional Bar to the Consideration of Evidence Concerning Petitioner's Association With the Communist Party.

Mrs. Bennett's testimony was introduced into evidence before the Southern Subcommittee of Bar Examiners and the full Committee without any objection by petitioner [R. 42-57, 97]. The California Eagle articles and the transcript and statement from the California Senate Committee on UnAmerican Activities were similarly introduced without objection [R. 8, 58, *et seq.*, 97]. Any constitutional privilege which petitioner might have had to the consideration of such evidence was thereby waived. However, even had there been no waiver, there is no constitutional bar to considering such evidence. Nor is there a constitutional privilege, such as is urged by petitioner, which prevents respondents from asking him whether he now is, or formerly was, a member of the Communist Party.

Numerous decisions of this Court have affirmed the right to inquire into past or present associations with the Communist Party in other contexts.

Garner v. Board of Pub. Wks. of Los Angeles, 341 U. S. 716;

Adler v. Board of Education, 342 U. S. 485;

Orloff v. Willoughby, 345 U. S. 83;

American Communications Assoc. v. Douds, 339 U. S. 382;

Gerende v. Board of Supervisors, 341 U. S. 56;

Black v. Cutter Laboratories, 100 L. Ed. Adv. 681;

Steinmetz v. Cal. State Board of Education, 44 Cal. 2d 816; cert. den. 100 L. Ed. Adv. 538.

Respondents submit that the interest of the state in selecting personnel for its Bar is no less vital and im-

portant than the situations there presented and equally justifies the right of the state to make such inquiries. Every state court considering this problem has arrived at the same conclusion.

In re Anastaplo, 121 N. E. 2d 826; cert. den. 348 U. S. 946; reh. den. 349 U. S. 908;

Schware v. Board of Bar Examiners, 60 N. M. 304, 291 P. 2d 607;

In re Patterson (Ore., 1956), 25 U. S. Law Week 2201;

The Canadian courts reached the same result in *Martin v. Law Society*, 3 Dom. L. R. 173.

It may be added, though perhaps unnecessarily, that even were it assumed, contrary to the fact, that petitioner had a constitutional privilege not to answer, an adverse inference may nevertheless be drawn from the exercise of this privilege.[11]

Adamson v. California (1946), 332 U. S. 46.[12]

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[11]As will be discussed in Part IV, even were no such inference drawn, there is sufficient affirmative evidence of petitioner's association with the Communist Party to properly raise reasonable doubts whether petitioner was a person of good moral character and could truthfully state that he did not advocate the violent overthrow of the government. Apart from any adverse inferences from petitioner's failure to answer, he can certainly not contend that his failure to answer provided the affirmative evidence necessary to dispel these doubts and establish his qualifications as required by California law.

[12]We do not argue that such a refusal to answer is tantamount to a confession of guilt or a presumption of perjury. But it is proper to consider and attach significance to the fact that a man remains silent when confronted with serious and responsible evidence against himself which it is within his power to contradict, confirm, or explain. See Concurring Opinion, Mr. Justice Frankfurter in *Adamson v. California* at pp. 59-61.

G. There Are No Other Grounds Upon Which Respondent's Action May Be Reversed.

Two final arguments raised by petitioner require brief mention:

1. He was required to bear an unreasonable burden of proof (Pet. Br. 7, 55).

2. He was denied due process by respondent's retroactively establishing a political test for admission to the Bar (Pet. Br. 55-57).

1. Burden of Proof.

The issue of burden of proof is of extreme importance to the State Bar of California and, we are sure, to other State Bars throughout the country. The statutes in the various states have uniformly been construed to require the applicant to bear the burden of establishing his qualifications for admission. This is true in California where, although burden of proof is nowhere specified in the statutes, the cases from earliest times have required the applicant to bear the burden of proof and have stressed the necessity of the candidate desiring admission to be open and candid with the Committee of Bar Examiners and assist them by disclosing all relevant information.

Spears v. The State Bar (1930), 211 Cal. 183;
In re Wells (1917), 174 Cal. 467;
In re Steppay (1940), 15 Cal. 2d 71;
In re Garland (1934), 219 Cal. 661;
State Bar v. Tangert (1954), 43 Cal. 2d 637, 642.

Most of the early California cases dealt with good moral character and their holdings have since been sum-

marized in Rule 10 of the Rules of the Committee of Bar Examiners which provides:

> "The applicant shall have the burden of proving that he is possessed of good moral character, of removing any and all reasonable suspicions of moral unfitness, and that he is entitled to the high regard and confidence of the public."

Even where no serious doubt arises with respect to an applicant's qualifications, it is standard practice to inquire into many personal matters which a person is normally privileged to keep to himself. Thus, the standard application form required of all applicants asks the applicant for details of his past employment, education, whether he was ever suspended, reprimanded or censured as a member of any profession or organization, whether he has ever been arrested, whether he has ever been a party to a lawsuit and for the details of any incidents of a derogatory nature bearing on his fitness to practice law. If the answers to such questions embarrass an applicant, he is privileged to refuse to answer just as he is privileged to refuse to answer any question on the Bar examination. However, in either case he runs the risk that failure to answer such questions will prevent his admission to the Bar.

Respondents submit that it is in no sense unreasonable or improper to require an applicant to cooperate in supplying all requested information that is relevant to his statutory qualifications. California requires that the applicant bear the burden of establishing his good moral

character by removing all reasonable suspicions of his moral unfitness. Although a specific rule has not been adopted with regard to advocacy of violent overthrow of the government, it can be assumed that a similar test applies. Respondents submit that both the tests themselves and the manner in which they were applied here clearly do not violate the requirements of due process:

(a) *Good Moral Character:*—Reasonable doubts that petitioner was a person of good moral character arose from many sources:

(1) Direct testimony that he was a member of the Communist Party.

(2) Transcript of hearings before the California Senate Committee on UnAmerican Activities indicated that petitioner was a member of the Communist Party.

(3) Statements in petitioner's California Eagle articles and before the Senate Committee indicating that he may have been a member of the Communist Party.

(4) Statements in petitioner's California Eagle articles and before the Senate Committee which directly indicated that petitioner's moral standards were deficient.

(5) Petitioner's refusal to answer questions in such broad areas of inquiry as to effectively prevent inquiry into broad areas of doubt.

The evidence submitted by petitioner was not directed to these areas of doubt or to the removal of doubts and suspicions which were raised in the minds of the Com-

mittee members. It was therefore ineffective to reasonably dispel such doubts.[13]

Respondents have considered many close cases, but this was not one of them. The sources of serious doubts whether petitioner was of good moral character were so widespread that even were several of them removed from consideration petitioner would have still been denied admission. For example, as long as there is one reliable source of information indicating that petitioner was actively associated with the Communist Party remains and petitioner refuses to testify or otherwise produce evidence reasonably dispelling this area of doubt, he has failed to sustain the burden of proof required by the California law.

(b) *Advocacy of Violent Overthrow of the Government:*—Petitioner was refused admittance on two independent grounds either of which is sufficient to sustain the decision below. We feel that the determination with respect to good moral character was clearly correct, but the determination with respect to violent overthrow of the government would seem to be undisputable.

Petitioner stated that he did not advocate the violent overthrow of the government. He thereafter took the position that any further inquiry by the Committee with

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[13]Serious consideration was given to all of petitioner's evidence. His letters of recommendation were given particular weight. However, respondents have encountered numerous cases where splendid letters of reference were submitted even though the applicant was neither fit nor qualified. See, for example, *In re Stevens*, 59 Cal. App. 2d 251; *Wettlin v. State Bar*, 24 Cal. 2d 862; *Vaughan v. State Bar*, 208 Cal. 740; *Kepler v. The State Bar*, 216 Cal. 52; *Feinstein v. State Bar*, 39 Cal. 2d 541. Moreover, the doubts with respect to petitioner arose primarily in specific areas such as those relating to the Communist Party and the failure of any of the letters to indicate an awareness of these areas of doubt materially lessened their value.

respect to this requirement was foreclosed. This is equivalent to his appearing before the Committee and stating that he is a person of good moral character and the Committee must accept his statement and not inquire further. Even were there no adverse evidence in the record, respondents could properly refuse to certify an applicant as not having established his compliance with Business and Professions Code Section 6064.1, where, as here, he took the position that his bare answer that he complied with the requirement foreclosed further inquiry. However, we need not stop at this point. There was evidence from three different sources which petitioner neither denied nor explained, that he was an active member of the Communist Party, an organization which has repeatedly been found to advocate the violent overthrow of the government. (In addition, it may be noted that his California Eagle articles also provide some direct evidence that he was sympathetic to and probably advocated the violent overthrow of the government—*e. g.*, the article set forth at page 213 *et seq.* of the record where he declared that loyalty to America meant militant (which Webster defines as engaged in warfare, fighting, etc.) support of the principles of the Constitution as petitioner defined them. We feel that it is fair to surmise from petitioner's articles and activities that his definition of these principles are in close accord with those of the Communist Party).

Unless this Court were willing to hold that evidence of membership in the Communist Party has no possible relevancy to whether a person advocates the violent overthrow of the government, and we submit that such a position would be unthinkable, petitioner has unquestionably failed to bear the burden of proving he does not advocate the violent overthrow of the government.

As previously noted, even were one or more of the groups of evidence relied upon above removed from consideration, there is ample evidence to support the determination.

Barsky v. Board of Regents, 347 U. S. 442.

2. Contention That a Political Test For Admission Was Retroactively Established.

It is abundantly clear from prior sections of this brief that petitioner was not denied admission because of his political beliefs and activities. However, putting aside the question of what can properly be called a political belief or activity, petitioner apparently is attempting to argue that considering ev ence of Communist Party membership where no reported case considered such evidence denied him due process. Such an argument has at least two major fallacies preventing it from having any validity:

(a) Petitioner has never been admitted to the Bar and hence is in no position to argue retroactivity. We feel that there is no question but that California could have adopted new requirements for admission or altered old ones at any time during which petitioner was preparing for admission to the Bar without any possible question of retroactive legislation arising.

Chase Securities Corp. v. Donaldson (1944), 325 U. S. 304.

(b) The doctrine of unconstitutional retroactivity (which is itself limited) has never been applied to court decisions construing existing statutes. It is fundamental to our legal system that the law must be

allowed to develop and grow by court construction of existing statutes and the fact that a particular type of evidence or a particular type of moral defect was not previously considered in a reported decision in no way implies that such evidence or conduct is not relevant to good moral character and may not be considered in the future.[14]

VII.
Conclusion.

Two important rights are before this Court:

1. The right of each state to administer its own affairs and protect its interests and those of its citizens by prescribing the conditions for admittance to its Bar, and

2. The right of every citizen under the Fourteenth Amendment to be protected from state action denying him due process or equal protection of the laws including the protection of the First Amendment rights of free speech, press and assembly to the extent incorporated under the Fourteenth Amendment.

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[14]Even had there previously been a California decision specifically holding that Communist Party membership could not be considered as relevant to good moral character, there would have been no constitutional bar to such a decision being reversed or distinguished. However, not only was there no such decision, but on the contrary, past decision of the California courts would, if anything, indicate that such evidence could be considered. (See, for example, *Large v. The State Bar*, 218 Cal. 334.)

Respondents respectfully submit that the record fully establishes that:

1. California's statutes and practices governing admission to the Bar and their application in the present case are well within the area of permissible state action, and

2. The refusal to admit petitioner to the California Bar did not improperly infringe upon his rights under the Fourteenth Amendment. The decision of the California Supreme Court should therefore be affirmed.

Respectfully submitted,

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APPENDIX.

Constitutional Provisions and Statutes.

A. *Constitutional Provisions:*

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B. *California Statutes:*

Business and Professions Code Section 6010.

"§6010. *Board of governors.* The State Bar is governed by a board known as the board of governors of the State Bar. The board has the powers and duties conferred by this chapter."

Business and Professions Code Section 6046.

"§6046. *Examining committee: Powers.* The board may establish an examining committee having the power:

"(a) To examine all applicants for admission to practice law.

"(b) To administer the requirements for admission to practice.

~~"(c)~~ To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter."

Business and Professions Code Section 6047.

"§6047. *Same: Rules and regulations.* Subject to the approval of the board, the examining committee may adopt such reasonable rules and regulations as may be necessary or advisable for the purpose of making effective the qualifications prescribed in Article 4."

Business and Professions Code Section 6060.

"§6060. *Qualifications for applicants.* To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:

"(a) Be a citizen of the United States.

"(b) Be of the age of at least 21 years.

"(c) Be of good moral character.

"(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination."

Business and Professions Code Section 6064.

"§6064. *Admission on examiners' certificate: Admission certificate.* Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit such applicant as an attorney at law in all the courts of this State and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court."

Business and Professions Code Section 6064.1.

"§6064.1. *One advocating the overthrow of government not to be admitted.* No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconsitutional means, shall be certified to the Supreme Court for admission and a license to practice law."

Business and Professions Code Section 6066.

"§6066. *Court review of refusal to certify examined applicant.* Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court."

Business and Professions Code Section 6068.

"§6068. *Duties as an attorney.* It is the duty of any attorney:

"(a) To support the Constitution and law of the United States and of this State.

"(b) To maintain the respect due to the courts of justice and judicial officers.

"(c) To counsel or maintain such actions, proceedings or defenses only as appear to him legal or just, except the defense of a person charged with a public offense.

"(d) To employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

"(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client.

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

"(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

"(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed."

C. *Rules and Regulations:*

Rule I, Section 2 of the Rules Regulating Admission to Practice Law in California

"The committee shall have power to examine all applicants for admission to practice law and to administer the requirements for admission to practice. The committee shall certify to the Supreme Court for admission to practice law those persons, and only those persons who fulfill the requirements for admission to practice law provided in The State Bar Act and by these rules."

Rule X, Section 101 of the Rules Regulating Admission to Practice Law in California

"Every applicant shall be of good moral character. Investigations in reference to the moral character of applicants may be informal, but shall be thorough, with the object of ascertaining the truth. Neither the hearsay rule, nor any other technical rule of evidence, need be observed; but an applicant shall be advised of any and all information received by the

committee adversely bearing on his moral character upon which a denial of recommendation by the committee is based; and he shall be given a reasonable opportunity to rebut or explain the same. The applicant shall have the burden of proving that he is possessed of good moral character, or removing any and all reasonable suspicion of moral fitness, and that he is entitled to the high regard and confidence of the public."

Rule 59(b) of Rules on Appeal of the California Supreme Court

"A petition to the Supreme Court to review any other action of the Board of Governors of The State Bar, or of any committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act shall be filed within 60 days after written notice of the action complained of is mailed, postage prepaid, to the petitioner, addressed to him at his last known address appearing on the records of The State Bar. The petition shall be verified, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service on the Board of Governors of 3 copies of the petition and the brief. Within 10 days after service of the petition, the Board of Governors may serve and file an answer and brief. Within 5 days after service of the answer the petitioner may serve and file a reply. If a review is ordered the Board of Governors, at least 20 days before the return day, may serve and file a supplemental brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which 3 copies shall have been served on the Board of Governors."

California Admission Procedure.

Under the California procedures, prospective attorneys must:

1. Register during the first year of law school and pass a first-year students' examination at the end of the first year unless qualifying under one of the statutory exemptions—*e.g.*, students who successfully complete the first-year course at an accredited law school are not required to take the first-year examination.

2. When a student completes the educational requirements and feels that he is qualified for admission to practice law, he may file for permission to take the Bar exam and for subsequent admission to the Bar. The Bar examination is given twice a year, with most students taking the Fall examination. Applications for the Fall examination must be filed during the April 1 to June 30 period preceding the exam.

Upwards of 1,600 first-year registrations are received each year. Approximately 60% of such registrants eventually apply for admission to the Bar and about 80% of those applying for admission eventually are admitted.

The statutory standards for admission must be met at the time of admission. The fact that the applicant did or did not meet certain of the qualifications when he registered as a first-year student is immaterial. For this reason, together with the large number of first-year registrants who never apply for admission and the limited staff which is available to process the applications, it is the fixed policy of the Committee not to make any determination of an applicant's qualifications at the time of his first-year registration. This has been modified in the last two years by a policy allowing a first-year regis-

trant to affirmatively request an advisory opinion on his qualifications where he feels doubt exists. With this limited exception, the determination with respect to all qualifications, such as good moral character, is made during the approximately four months between the filing of the application and the date of the Bar Exam. Most applicants are so clearly qualified that only a routine check with past employers, references, etc., is necessary. In a few cases doubts arise, but are readily dispelled by the applicant in ample time to allow him to take the Bar examination. Where the applicant fails to establish his qualifications prior to the Bar examination, it has been the Committee's practice, if requested to do so, to allow him to take the Bar examination under the express understanding that his other qualifications must subsequently be determined and that doubts as to these qualifications are not waived by allowing him to take the Bar examination.

It may also be noted that under the California admissions procedure, petitioner may reappear before the Committee at any time now and submit evidence that he meets the statutory tests of good moral character and not advocating the violent overthrow of the government.